

UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF NEW YORK

In the Matter of:	Chapter 11
MORGANSEN'S LTD.	03-80994
Debtor	

Motion to Expedite for a Proposed Public Auction Sale

United States Bankruptcy Court
Central Islip, New York

October 14, 2003
10:30 a.m.

B E F O R E:

HONORABLE STAN BERNSTEIN,
Bankruptcy Judge

A P P E A R A N C E S:

MELTZER, LIPPE & GOLDSTEIN, LLP
Attorneys for Trustee
190 Willis Avenue
Mineola, NY 11501
BY: NEIL H. ACKERMAN, ESQ.

ALSO PRESENT:

Maur Dubin

Marvin Goldberg

Eileen Cronin, Court Reporter

P R O C E E D I N G S

THE COURT: Mr. Ackerman.

MR. ACKERMAN: Neal Ackerman, Trustee and appearing by counsel for the Trustee, Meltzer Lippe & Goldstein LLP.

THE COURT: The court reviewed all of the papers that have been submitted. First they were given an opportunity to supplement their statements. I have read all of the cases, and I have concluded that the Trustee has the right to go ahead and conduct an auction sale and sell items that persons are claiming are consigned goods.

MALE VOICE: I can't you your Honor.

THE COURT: I have already decided the matter. I have issued an opinion that is available here. Your only alternative at this point is to file an appeal with the District Court. You have ten days to do that from the date of the entry of the order consented today, and you will probably have to post a bond because the Trustee is going to oppose any appeals. I share your frustrations, but the law is clear.

In light of this matter, Mr. Ackerman, since you now have the authority to go forward, when are you going to conduct this sale. I know you are concerned about the \$10,000 in operating costs or costs incurred both to maintain the premises, the insurance, the utilities, burglar

1 alarms and alike.

2 MR. ACKERMAN: As quickly as possible, Judge.
3 Should I submit a proposed order. I see this is so ordered.

4
5 THE COURT: No, you don't need to submit one
6 here, but you need to -- but if you are going to schedule a
7 sale, I think what you ought to do is go ahead and make
8 arrangements with Mr. Maltz to do it as expeditiously as
9 possible, but make sure that you have him circulate it to
10 his database and I guess you will make some determination
11 what's the best advertising vehicle to publicize the sale,
12 and I assume you can also have him put notices up at the
13 building.

14 What about the issue of alternative sites for
15 warehoused goods? There was an issue raised whether or not
16 Ms. Brunesco had some kind of facility in New York. I know
17 she had an office in New York. I know she dealt during the
18 non-summer months in the City of New York with art dealers
19 and other dealers and interior decorators.

20 Have you been able to resolve the question of
21 whether there is some alternate site where either the
22 inventory of the debtor or some consigned goods are located?

23 MR. ACKERMAN: We are investigating it. We
24 have not resolved it. We did hold a 341 last Thursday, I
25 believe at 2:30. One of the purported consignors came in.

1 I asked Ms. Brunesco questions with respect to these other
2 warehouses, about conducting auctions in the Bronx, et
3 cetera, her testimony was that there was one other
4 warehouse, but that it had been closed down approximately
5 nine months after the company had been opened in 2000. She
6 stated that she conducted only one auction in the Bronx for
7 another company. I am continuing to investigate.

8 There was other testimony about other questions
9 of this ilk. I asked about names of people I have been
10 given. What there connection was to the company. People
11 who were clearly authorized to use American Express cards of
12 the company. What their names were. I have asked for
13 additional documents, et cetera.

14 THE COURT: Okay, but that has to do with the
15 administration of the estate. But as to your conducting the
16 auction, it is now October 14th. You seem to be enjoying at
17 least through yesterday a very pleasant Fall. The weather
18 is turning adverse for the next few days. How long do you
19 think it is going to set up the first day of sale?

20 MR. ACKERMAN: Am I authorized to conduct
21 publication notice with cause up to \$7,500 to be published
22 in I believe The New York Times, the Hamptons Journal,
23 public dance papers, Newsday.

24 THE COURT: Fine as long as you get the bases
25 covered. I don't know how much notice there is. I don't

1 know how expensive an ad in The New York Times is, although
2 Mr. Maltz did seem to indicate that persons who come from
3 the tri-state area, from Westchester to Dutchess County and
4 parts of New Jersey and other parts of New York City and
5 Long Island.

6 MR. ACKERMAN: My preference, Judge, would be
7 to hold -- I believe that today being Tuesday, we should be
8 able to get publication notice in this weekend, and we might
9 be able to hold the first auction sale next week. I would
10 like to add for the record that I am going to be asking
11 someone to assist Mr. Maltz in the sale. I have made
12 contact with Robert Tepper and additionally Doyle & Company.

13 THE COURT: Robert Tepper?

14 MR. ACKERMAN: Yes. One second, Judge. I have
15 the names over here. I apologize. There is Tepper
16 Galleries at 110 East 125th Street. One of the consignors
17 gave his name to me and also the US Trustee highly
18 recommended them and there is also a Doyle Galleries. I am
19 going to pick between the two, but I will ask one of them to
20 assist Mr. Maltz.

21 MR. DUBIN: May I say something.

22 THE COURT: Let Mr. Ackerman finish. Is there
23 anything further Mr. Ackerman?

24 Mr. Ackerman, anything further? I am concerned
25 that you going to be bumping into Thanksgiving.

1 MR. ACKERMAN: I'm going to try to do the
2 auction sales as quickly as possible now.

3 THE COURT: You simply have to trade off a
4 quick date with adequate notice and advertise. I will leave
5 that to your determination.

6 MR. ACKERMAN: Judge, pursuant to local rule,
7 there is a provision in the Federal Bankruptcy Rules under
8 6004 that states that you may authorize the sale to be
9 conducted within -- and not waiting ten days. Do you so
10 authorize?

11 THE COURT: No, I'm not going to authorize in
12 short of ten days.

13 MR. ACKERMAN: Okay.

14 THE COURT: I mean you are going to have to
15 get the ad out and there may be some inquiries that come in.
16 It seems to me that creditors or other consignors and others
17 might want to participate.

18 MR. ACKERMAN: Yes.

19 THE COURT: It should be given adequate
20 notice. They already have had one notice, but we didn't set
21 a date. So I would prefer that you give at least two weeks
22 notice or two weeks from the date you begin advertising to
23 the date of the sale.

24 I assume at the same time you are going to have
25 to have a back-up date, and I suspect that Mr. Maltz in

1 consultation with one of these companies can assist in
2 determining what should be sold first.

3 I know at one point Mr. Maltz said there is so
4 much stuff that's backed up that you have to clear the floor
5 in order to get to the other stuff. But I don't know what's
6 going to bring the most traffic.

7 MR. ACKERMAN: I will send a direct notice in
8 addition to the publication notice and the direct notices
9 that Mr. Maltz is sending to the people who claim to be
10 consignors.

11 Judge, one thing I would like to ask further. I
12 apologize for compounding. In the agreement, the
13 consignment agreement, it does say that the bidders -- that
14 the consignors may not bid. May I have authorization for
15 them to bid?

16 THE COURT: Yes.

17 MR. ACKERMAN: Thank you.

18 THE COURT: But you are going to set some
19 reserves?

20 MR. ACKERMAN: Yes.

21 THE COURT: All right. So what happens if an
22 item doesn't bring the reserve price?

23 MR. ACKERMAN: Then, Judge, I will take it out
24 of the setting, and I might leave it with some art gallery
25 or something like that pursuant to further order of the

1 Court.

2 THE COURT: Okay. All right. Go ahead. Do
3 you want to step forward please. Step forward, identify
4 yourself on the record please.

5 MR. DUBIN: My name is Maur. —A-U-R. Dubin.
6 D-U-B-I-N. And I have been in this business for many years.
7 I am a bit confused about a number of things.

8 I dealt with a man called Ben Morgansen, and that
9 is who I gave my things on consignment to. Who this woman
10 is who suddenly owns or is head of the company, I have no
11 idea. I have never seen her. I have never talked to her.
12 I know nothing about her.

13 I know that I have merchandise that belongs to me
14 that was given on consignment to Ben Morgansen. I have
15 heard you mention that you might consider --

16 THE COURT: If you have some agreements,
17 written agreements, you can show them to the Trustee. The
18 Trustee can make some kind of determination.

19 MR. DUBIN: Well, I don't know how he can
20 transfer my material without my permission.

21 THE COURT: Mr. Dubin, I can't determine this
22 at this point in time. Whatever documentation you have, I
23 don't know how far back these transactions go. I hear you,
24 but there is nothing I can do about this at this point. It
25 is your burden to show that these matters weren't delivered

1 to this particular debtor.

2 MR. DUBIN: We did that. We went out. We
3 marked every item. We had the list of when we gave them.

4 THE COURT: But this is not addressed to me.
5 It is addressed to the Trustee. If you can demonstrate to
6 him that these goods were not delivered to this particular
7 debtor and that it was was delivered to some other company
8 or some predecessor --

9 MR. DUBIN: They came and picked them up in
10 their trucks from my premises.

11 THE COURT: What records do you have?

12 MR. DUBIN: I have lists which I took out to the
13 Southampton, went through the previous auctioneer, showed
14 each item --

15 THE COURT: It's not a question of your
16 identifying them. The question is what proof, what written
17 records do you have to demonstrate that you caused these to
18 be delivered to another entity.

19 MR. DUBIN: I have in my records a signed
20 receipt from his deliverymen who came and picked up the
21 items.

22 THE COURT: Show all of this to the Trustee.
23 The Trustee will review it.

24 MR. DUBIN: In addition, I have done business
25 for many years at Tepper and Doyle Galleries. Doyle will

1 not take this merchandise. It is not their quality. So if
2 you even going to think about offering it to them, it's a
3 waste of time. You might get into Tepper. You certainly
4 won't get into Doyle.

5 THE COURT: I don't think it was a question of
6 making a determination where unsold items would go. The
7 question was getting -- since some of you have said you
8 ought to avail yourself of some experts in the industry.
9 The Trustee is trying to take up your suggestion and make
10 sure these get input from a recognized antique house. They
11 are not determining now --

12 MR. DUBIN: There are no antiques there. It's
13 second hand furniture.

14 THE COURT: Anything further, Mr. Dubin?

15 MR. DUBIN: I suppose not.

16 THE COURT: Thank you.

17 MR. GOLDBERG: Your Honor, may I?

18 THE COURT: Yes.

19 MR. GOLDBERG: Marvin Goldberg, a creditor.
20 May I ask the debtor a few questions, your Honor?

21 THE COURT: No. What's the point of this. I
22 am not turning this into a discovery hearing. You want to
23 talk to Mrs. Brunesco, you can talk to Mrs. Brunesco. You
24 don't need to have her come and testify.

25 MR. GOLDBERG: Well, my impression from the

1 last hearing that we had here was that she would be produced
2 today.

3 THE COURT: No. She was going to be produced
4 at the meeting of the creditors, and you were given an
5 opportunity to ask her questions there because then she was
6 under oath.

7 MR. GOLDBERG: Well, can't we have her sworn in
8 again for a few questions today, your Honor?

9 THE COURT: I want to know what the point of
10 this is Mr. Goldberg.

11 MR. GOLDBERG: Well, it has to do with four
12 items that were missing from the viewing that my wife and I
13 went to at the Southampton facility.

14 THE COURT: All I'm trying to deal with now is
15 the issues of what's to be sold; not what may have been
16 sold. You may have claims against the estate by filing
17 proofs of claim on the theory that you had a right to the
18 negotiated amount upon some further sale or disposition, but
19 these claims -- look these are claims you may have against
20 Mr. Brunesco individually.

21 These may be claims you have against the estate.
22 But we will have a period of time for filing proofs of claim
23 so you can assert your position, and if you want to take
24 discovery in connection with those matters, you can do it
25 there. If you want to talk to Ms. Brunesco now, you can do

1 that, if she is willing to talk to you. She's in the
2 courtroom, isn't she.

3 MR. GOLDBERG: I don't see what purpose that
4 would accomplish unless she was under oath.

5 THE COURT: Mr. Goldberg, I am not turning
6 this into an opportunity for you to start taking an
7 examination to prove your claim. The only thing before the
8 Court is with respect to the inventory that is there. How
9 should it be disposed of, and I already ruled on that.

10 MR. GOLDBERG: Well, we don't know if it's there
11 or not there. We visited the facility. Four items were
12 missing. We would like to know whether they were sold,
13 when, and if so, what happened to the proceeds because we
14 never saw one penny.

15 THE COURT: I understand, but this is not the
16 occasion for doing that.

17 If you want to talk to Ms. Brunesco with the
18 Trustee, the Trustee has an obligation to cooperate with
19 creditors, but it is not something that is now the occasion
20 for doing discovery in connection with any claims that you
21 may have against her. And you are not precluded from doing
22 that. But this is not the occasion.

23 MR. ACKERMAN: Judge, the adjourned 341 in this
24 is October 22 at 2:00.

25 THE COURT: October 22 at 2:00. And where is

1 that going to be held?

2 MR. ACKERMAN: That will be held on the fifth
3 floor of this very same building.

4 THE COURT: In this building?

5 MR. ACKERMAN: Yes.

6 THE COURT: Fifth floor on 10/22/03 at 2:00
7 p.m.

8 MR. ACKERMAN: Judge, I apologize. October 20.
9 I apologize. October 20. 2-0. Monday. I apologize
10 Monday.

11 THE COURT: So it's next Monday?

12 MR. ACKERMAN: Yes.

13 THE COURT: Ms. Brunesco is going to be there
14 to testify?

15 MR. ACKERMAN: Yes.

16 THE COURT: So what I think Mr. Goldberg you
17 ought to do is give the information to the Trustee so that
18 he can make that investigation for you if you don't want to
19 attend. I think that's the time to do it because then she
20 will be under oath. The Trustee controls the meeting. If
21 there are problems, he can come up here. I will be in the
22 courthouse. All right.

23 MR. GOLDBERG: Thank you, your Honor.

24 THE COURT: All right, Mr. Goldberg. Anything
25 further, Mr. Ackerman?

1 MR. ACKERMAN: Nothing further, Judge.

2 THE COURT: You better get cracking.

3 MR. ACKERMAN: Thank you.

4 (Whereupon, the hearing was adjourned.)

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UNITED STATES BANKRUPTCY COURT FOR THE EASTERN DISTRICT OF

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NEW YORK, HON. STAN BERNSTEIN PRESIDING, IN THE MATTER OF

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